

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN - WATERLOO DIVISION

UNITED STATES OF AMERICA  Plaintiff,  vs.  DANIEL EDWARD BOUSKA,  Defendant.	No. CR 96-2067 MJM  <b>ORDER</b>
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The matter before the Court is the claim of Betty Jean Kauffman in a forfeiture proceeding which was held as part of this criminal case. Betty Jean Kauffman claims the status of an innocent owner by virtue of a note and mortgage held against property which is the subject of the Government forfeiture. The Court held an evidentiary hearing on the claim of Ms. Kauffman and now issues its findings of fact and conclusions of law.

**Findings of Fact**

Betty Jean Kauffman is the mother of Mavis Kauffman. Mavis Kauffman and the defendant, Daniel Bouska, lived together for many years. During the period of their co-habitation, Mr. Bouska farmed a number of pieces of property.

During calendar years 1992 and 1993, Mary Jean Kauffman and her husband, Orson Kauffman, loaned money to their daughter Mavis Kauffman and Daniel Bouska

for farming operations. Principally, the money was loaned for crop inputs. It was understood that the money would be repaid at the time the crops were harvested. As of the fall of 1994, approximately \$53,000 was owed on the indebtedness. At that time, Mavis Kauffman and Daniel Bouska were not able to fully repay the indebtedness owed to Orson and Betty Jean Kauffman.

Prior to November 1994, there was no documentation which evidenced the debt between Mr. and Mrs. Kauffman and Mavis Kauffman and Daniel Bouska. Betty Jean Kauffman made a trip to Iowa from the residence of Orson and Betty Jean Kauffman in Missouri in November 1994. During that trip, it was agreed that the debt would be memorialized by a promissory note and a mortgage given on the property owned by Daniel Bouska to secure payment of the indebtedness. The parties had an attorney from the law firm of Elwood, O'Donohoe, O'Connor & Stochl prepare a promissory note and mortgage. Mr. Bouska signed the note payable to Betty Jean Kauffman and gave a mortgage on the property, which is the subject of this forfeiture proceeding, to Ms. Kauffman.

A search warrant had been issued and a search executed on the subject property in May 1994. Eventually, federal charges were filed against Daniel Bouska on June 27, 1996. A preliminary Order of forfeiture was issued on the subject property on March 31, 1997. Sometime thereafter, the Kauffman's were served with the forfeiture proceedings.

Essentially, the factual issue this Court must resolve is whether Mr. and Mrs. Kauffman had any knowledge of Daniel Bouska's illegal drug activity on the subject property when they loaned money to Mavis Kauffman and Daniel Bouska, and eventually took back a promissory note and mortgage for the indebtedness.

This Court concludes that having considered all the evidence and testimony, there is no evidence to indicate that Mr. and Mrs. Kauffman knew about the drug dealing activities. It should be noted that Mr. and Mrs. Kauffman both lived in Missouri and only made two or three trips a year to Iowa. There is no reason to believe that Mr. and Mrs. Kauffman had any knowledge about the execution of a search warrant on the property which was owned by the boyfriend of their daughter. In fact, there is every reason to believe that Mavis Kauffman hid any drug dealing activities from her parents. The Court finds credible the testimony of Orson Kauffman that he did not become aware of any of these events until Daniel Bouska was indicted, and the fact of the indictment was reported in the local news media.

### **Conclusions of Law**

The property which is the subject of this forfeiture action is legally described as follows:

Parcel A in the Southeast Quarter of the Northeast Quarter  
Of Section 28, and in the Southwest Quarter of the Northwest  
Quarter of Section 27, and Parcel B in the Southwest Quarter

of the Northwest Quarter of Section 27, all in Township 96 North, Range 12 West of the 5<sup>th</sup> P.M. Chickasaw County, Iowa, containing 6.2 acres more or less.

Betty Jean Kauffman claims a security interest in the property and has brought a petition pursuant to 21 U.S.C. § 853(n)(2). That section provides that any person, other than the defendant, can assert a claim against property which is the subject of forfeiture, and request a hearing to adjudicate the validity of any alleged interest. In this case, Betty Jean Kauffman claims a security interest by virtue of a mortgage recorded with the Chickasaw County clerk of court on the 14<sup>th</sup> day of November, 1994. The Court concludes that the mortgage is a valid and enforceable lien against the property, which is superior to the claim of the United States of America made pursuant to this forfeiture proceeding.

21 U.S.C. § 853(n)(6) further provides that the Order of forfeiture shall be amended to reflect the bonafide interest of any person who has a claim superior to that of the United States. Accordingly, the Order of forfeiture in this case shall be amended accordingly.

IT IS THEREFORE ORDERED that the Order of forfeiture previously entered against the above described property is amended to reflect the fact that Betty Jean Kauffman has a claim and an interest in the property superior to that of the United States by virtue of a promissory note dated November 11, 1994, in the principal amount of \$53,000, and a duly recorded mortgage dated the same date and filed

November 14, 1994.

IT IS FURTHER ORDERED that the total amount due and owing on the note as of January 26, 2001, is in the amount of \$80,980.18. Interest accrues from and after that date at the rate of \$12.34 per day until paid in full.

IT IS FURTHER ORDERED that arrangements should be made with the United States Marshals Office to either abandon the property to Betty Jean Kauffman if the value of the property is less than the amount of the indebtedness owed, or to sell the property, and after payment of sales fees and expenses to first pay the indebtedness to Betty Jean Kauffman and the remainder to the United States of America.

Done and Ordered this 29th day of October, 2001.

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Michael J. Melloy, Judge  
UNITED STATES DISTRICT COURT